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**Amendment No. 11 to SB2646**

**Cooper J  
Signature of Sponsor**

**AMEND Senate Bill No. 2646\***

**House Bill No. 2957**

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following new, appropriately designated part:

67-4-\_\_\_\_\_. This part shall be known and may be cited as the Professional Athletics Occupational Privilege Tax of 2002.

67-4-\_\_\_\_\_. Engaging in the occupation of professional athletics is declared to be a privilege taxable by the state alone. The privilege tax established in this part shall be collected by the commissioner of revenue and deposited to the state general fund.

67-4-\_\_\_\_\_. For purposes of this part, "professional athletics" means:

(1) Membership on any professional athletic team, and includes active players and players on the disabled list;

(2) Any individual performing or participating in a professional athletic event; or

(3) Services performed by any other persons who are required to travel with or perform services for the team on a regular basis, including coaches, general managers, managers, trainers, equipment managers, and administrative personnel.

67-4-\_\_\_\_\_.

(a) Each individual who exercises the privilege of engaging in professional athletics in Tennessee shall annually pay a tax measured by and equal to one percent (1%) of annual net earnings resulting from

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engaging in such privilege in Tennessee; provided, that there shall be exempted from the tax levied by this part the first two hundred fifty thousand dollars (\$250,000) of such earnings during the tax year multiplied by a fraction, the numerator of which is the individual's annual duty days in Tennessee and the denominator of which is the individual's total annual duty days.

(b) "Annual net earnings" by which this tax is measured shall be the sum of:

(1) Wages, salaries, commissions, and any other compensation received as an employee engaged in professional athletics, but only to the extent that such compensation was for services performed and privileges exercised in Tennessee; and

(2) The individual's share of net profit, but not less than zero (0), of any entity, including but not limited to a sole proprietorship, partnership, limited liability company, or corporation, engaged in any vocation, profession, business, or occupation subject to this tax, but only to the extent the entity's net profit is derived from the exercise in Tennessee of professional athletics; provided, that if the individual's participation in the entity is limited to the investment of money, such share of net profit is not subject to the tax levied by this part.

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(c) The annual net earnings derived from, or connected with, sources within Tennessee of a nonresident member of a professional athletic team includes that proportion of such individual's compensation received for services rendered as a member of such team that the duty days spent within Tennessee rendering services for such team in any manner during the taxable year bears to the total number of duty days rendering services for such team in any manner during the taxable year. In determining whether duty days are spent within Tennessee, travel days are duty days spent within Tennessee if Tennessee is the travel destination and are not duty days spent within Tennessee if Tennessee is not the travel destination; provided, when a game is scheduled to be played on a travel day, the duty day is considered to be spent where the game is scheduled to be played.

(d) For purposes of subsection (c), the following definitions apply:

(1) "Duty days" means all days, from the first day of the official pre-season training period of the professional athletic team through the day of the last game, including post-season games, in which such team competes, or is scheduled to compete, during the taxable year. "Duty days" include game days, travel days and practice days. For a member of a professional athletic team who renders services for a team on a day that is not otherwise a "duty day" (e.g., representing a team at an all-star game), the member's

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“duty days” include such a day. “Duty days” for any member joining a team during the season shall begin on the day such person becomes a member and for any member leaving a team during the season shall end on the day such person ceases to be a member. “Duty days” do not include any try-out or pre-season cut days that a player shall survive in order to obtain a contract or any days for which a member is not compensated and is not rendering services for the team in any manner because such person has been suspended without pay and prohibited from performing any services for the team.

(2) “Duty days spent within Tennessee” means duty days on which a member of a professional athletic team renders services, or is available to render services, for the member’s team, within Tennessee. Days when a member is not available to render services for the team because of an injury are “duty days” for that member, but are not “duty days spent within Tennessee” for that member unless the team is based in Tennessee.

(3) “Compensation received for services rendered as a member of a professional athletic team” means the total compensation received for the official pre-season training period through the last game in which the team competes or is scheduled to compete during the taxable year, plus any additional

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compensation received for rendering services for the team on a date that is not otherwise a “duty day” (e.g., compensation for representing a team at an all-star game) during the taxable year. “Compensation received for services rendered as a member of a professional athletic team” includes, but is not limited to, salaries, wages, guaranteed payments except as otherwise provided herein, bonuses, strike benefits, severance pay, and termination pay. Bonuses are includable in “compensation received for services rendered as a member of a professional athletic team” if they are earned as a result of play during the season or for playing in championship, playoff or “all star” games. Bonuses are also so includable if paid for signing a contract, unless all of the following conditions are met:

(A) Is solely in consideration of a nonresident athlete giving up amateur and free agent status and agreeing to be the exclusive property of the team;

(B) Is not conditional upon the athlete playing any games, or performing any subsequent services, for the team, or even making the team;

(C) Is separate from the payment of salary or any other compensation; and

(D) Is nonrefundable.

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(e) It shall be presumed that the method provided under subsection (c) is a fair and equitable method of determining the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from, or connected with, sources within Tennessee. However, the portion of compensation received for services rendered as a member of a professional athletic team that is derived from, or connected with, sources within Tennessee may be determined on the basis of a method other than that provided under subsection (c), if:

(1) The member establishes, to the satisfaction of the commissioner, that another method is fairer and more equitable;  
or

(2) In the discretion of the commissioner, the commissioner determines that the method provided under subsections (c) and (d) does not fairly and equitably reflect the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from, or connected with, sources within Tennessee.

(f) In the case of a nonresident athlete (other than a member of a professional athletic team), who is paid specifically for a performance or athletic event in Tennessee, the entire amount received is included in Tennessee adjusted gross income derived from, or connected with,

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sources within Tennessee if the athlete is carrying on a business, trade, profession or occupation in Tennessee (and the athlete's presence for business in Tennessee is not casual and isolated).

(g) In the case of a nonresident athlete (other than a member of a professional athletic team) who is not paid specifically for athletic events in Tennessee, the athlete's Tennessee adjusted gross income derived from, or connected with, sources within Tennessee includes that proportion of the athlete's income received from athletic events within and without Tennessee that the number of athletic events within Tennessee in which the athlete participated during the taxable year bears to the total number of athletic events within and without Tennessee in which the athlete played during the taxable year.

(h) Income directly or indirectly derived by an athlete from closed-circuit and cable television transmissions of an event, other than events occurring on a regularly scheduled basis, taking place within this state as a result of the rendition of services by such athlete, shall constitute income derived from, or connected with, sources within this state only to the extent that such transmissions were received or exhibited within this state.

(i) In lieu of members of professional athletic teams filing separate returns under subsection (a), the commissioner may provide for the filing of a composite return for every qualifying nonresident member of a

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professional athletic team by such team, if such team is doing business in this state or the members of such team have compensation that is received for services rendered as members of such team and that is derived from, or connected with, sources within this state.

(j) If a professional athletic team is required to file a composite return pursuant to this section, the commissioner may require such team to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by such qualifying nonresident members.

(k) The commissioner may require a professional athletic team to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by:

(1) Every resident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team; and

(2) Every nonresident member who is not a qualifying nonresident member, but only with respect to compensation that is received for services rendered as a member of a professional athletic team and that is derived from, or connected with, sources within this state.



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(l) Any amount paid by a professional athletic team to this state with respect to any taxable period pursuant to this section shall be considered to be a payment by the member on account of the income tax levied on the member for such taxable period pursuant to this part. The team shall be entitled to recover a payment made pursuant to this section from the member on whose behalf the payment was made.

(m) For purposes of this section, "qualifying nonresident member" means a member of a professional athletic team who is a nonresident individual for the entire taxable year, who does not maintain a permanent place of abode in Tennessee at any time during the taxable year, who does not have income derived from, or connected with, sources within this state other than compensation that is received for services rendered as a member of a professional athletic team and that is derived from or connected with sources within this state.

67-4-\_\_\_\_\_. For purposes of the tax levied by this part, a taxpayer's tax year shall be the same as the taxpayer's taxable year for federal income tax purposes, and a taxpayer's method of accounting shall be the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, annual net earnings shall be computed under such method that in the opinion of the commissioner of revenue fairly reflects earnings derived from the exercise in Tennessee of the privileges subject to this tax.

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67-4-\_\_\_\_\_.

(a) Each individual who has exercised any of the privileges subject to this tax shall file a Tennessee tax return with the commissioner of revenue on or before the fifteenth day of the fourth month following the close of the taxpayer's tax year, containing such information as the commissioner may reasonably require, and on forms prescribed by the commissioner.

(b) Without assessment, notice, or demand, the taxpayer shall pay any tax due to the commissioner on or before the due date of the return, without regard to any extension of time for filing the return.

Section 67-4-\_\_\_\_\_. An extension of time of four (4) months in which to file any return, statement or other document due or required under this part will be granted, provided that on or before the original due date of the return, the taxpayer makes the request and pays taxes equal to one hundred percent (100%) of the liability for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department of revenue.

Section 67-4-\_\_\_\_\_.

(a) Any return, declaration, statement or other document required to be made pursuant to this part shall be signed if required by, and then in accordance with, regulations adopted or instructions prescribed by the commissioner of revenue. The fact that an individual's name is signed to

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a return, declaration, statement or other document shall be prima facia evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this part, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true.

Section 67-4-\_\_\_\_\_. Notwithstanding any provision of law to the contrary, a refund of the tax levied by this part shall not be made unless:

(1) The refund claim is filed within one (1) year from December 31 of the year in which payment was made; or

(2) If no refund claim has been filed but the commissioner of revenue is in possession of proper proof and facts that a refund is due, the commissioner makes the refund within one (1) year from December 31 of the year in which payment was made.

SECTION 2. Any individual who exercises a privilege subject to the tax levied by this act and has earnings by which such tax is measured, after its effective date may bring suit for a declaratory judgment concerning the constitutionality and validity of such tax. Such suit may be brought only in the Chancery Court of Davidson County. The court shall expedite the hearing and determination of such suit to the extent possible,

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commensurate with the interests of justice. Any appeal of such suit shall be taken directly to the Supreme Court of Tennessee.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect on July 1, 2002, the public welfare requiring it, and shall apply to tax years beginning on or after July 1, 2002, the public welfare requiring it.